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UNITED STATES OF AMERICA	)	
	)	
	)	<b>DEFENSE REQUEST FOR</b>
	)	<b>WITNESS</b>
v.	)	
	)	<b>(Professor Antonio Cassese)</b>
	)	
DAVID M. HICKS	)	8 October 2004
	)	<b>(Updated 19 October 2004)</b>

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The Defense in the case of the *United States v. David M. Hicks* requests the following witness for the 01 November 2004 motion hearing at Guantanamo Bay and in support of this request the defense states:

**1. Witness information:**

Professor Antonio Cassese  
Professor of International Law, Florence University  
Office Phone: XXXX  
XXXX

**2. Need for translator:** None

**2. Synopsis of testimony:** It is anticipated the Mr. Cassese will testify as an expert in international criminal law, including but not limited to, the following:

- a. He will explain that the use of conspiracy in MCI 2, upon which charge 2 is base upon, is incorrect under international criminal law.
- b. He will explain that charge 1 is not a valid offense under international criminal law.
- c. He will explain the historical and theoretical background to the use of the “common purpose or conspiracy” include in Article 6 of the Nuremberg Charter, International Military Tribunal and the controversies on the charge of conspiracy. He will explain that the International Military Tribunal specifically excluded the offense of conspiracy to commit war crimes.
- d. He will describe the lack of international customary law on the use of conspiracy for all international crimes except for the offense of conspiracy to commit *genocide*.
- e. He will explain the use of “Joint Criminal Enterprise” or “Common Criminal Purpose” as a theory of liability for a crime. He will explain this type of theory of liability requires that a crime is actually committed or attempted.
- f. He will explain that while joint criminal enterprise is a general form of participation in international crimes and is applicable to war crimes, no allowance is made under international law for conspiracy to commit war crimes. No treaty or case law has ever asserted it. Moreover, it is inconsistent with the guiding principles of the Laws of War.
- g. He will explain under international humanitarian law, it is not permissible to consider a group of combatants as “outlaw” as a whole and therefore hold that joining a group that pursues illegal purposes is criminal *per se*.

**3. Source of knowledge:** I have spoken to him previously.

4. **Use of testimony:** This witness will testify on for the motion hearing scheduled to begin 1 November 2004.

5. **Reasonable availability of witness:** (Update portion) Since my initial request to the prosecution, Mr. Cassese has been named as Chairman for the International Commission of Enquiry into Genocide in Darfur. As this appointment will require him to be preparing at the UN High Commissioner's office, Geneva, he will only be able to testify via VTC or telephone on 1 Nov.

6. **Alternative to live testimony:** Stipulation of fact.

7. **Is the witnesses cumulative with other witnesses:** No.

8. **Attachments:** I am waiting on his CV as he is currently away from his home on business. I will forward his full CV as soon as I receive it. (Updated portion) Professor Cassese's decisions from his time on the ICTY are cited as legal authority in the prosecution's responses to defense motions.

Below is a brief review of Mr. Cassese's career.

Since 1981, Professor Cassese has taught International Law at the University of Florence, however his professional academic career dates back to 1972. A visiting professor at numerous universities including the Universities of Cambridge and Oxford, Professor Cassese has dedicated substantial energy to the development of the United Nations International Criminal Tribunals for Rwanda and the Former Yugoslavia.

Between 1993 and 2000, Professor Cassese fulfilled a judicial appointment with the International Criminal Tribunal for the Former Yugoslavia, and was the tribunal's President in 1993 and 1995 and acted as an Appellate Justice from 1997 to 2000.

Between 1984 and 1988, Professor Cassese was a member of the Italian delegation to the Council of Europe's Steering Committee for Human Rights, acting as the Committee's Chairman in 1987. During the late 1980's he was also a member, and subsequently President of the Council of Europe's Committee for the Prevention of Torture.

Professor Cassese was also a member of the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities in 1977, and Rapporteur for the "Study on the Impact of Foreign Economic Aid and Assistance on Respect for Human Rights in Chile from 1977 to 1988.

Recognizing his life-long dedication to international and human rights law, Professor Cassese was awarded the Man for Peace Award in 1995, the Robert G. Storey Award for Leadership in 1997, and numerous honorary doctorates. Found at [www.icj.org/article.php3?id\\_article=17&id\\_rubrique=13](http://www.icj.org/article.php3?id_article=17&id_rubrique=13)

By: \_\_\_\_\_  
M.D. MORI  
Major, U.S. Marine Corps



DEPARTMENT OF DEFENSE  
OFFICE OF THE CHIEF PROSECUTOR  
1610 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1610

October 14, 2004

MEMORANDUM FOR DETAILED DEFENSE COUNSEL ICO DAVID MATTHEW HICKS

SUBJECT: Witness Request for Cherif Bassiouni – U.S. v. Hicks

1. On October 8, 2004 the Defense Counsel in U.S. v. Hicks requested the above named witness be produced for live testimony at Guantanamo Bay, Cuba. The Defense request for Professor Bassiouni presents a generalized description of the subject matter the Defense wishes to explore with Professor Bassiouni: the differences between the common law and civil law systems, “theories of inchoate liability for offenses employed by a majority of countries,” etc. There is no explanation that details his testimony and how it relates to the Accused. (Paragraph 3).

2. Presiding Officer’s Memorandum (POM) Number 10, dated October 4, 2004, regarding witness requests provides:

c. Paragraph 3: {Synopsis of witness’ testimony}. What the requester believes the witness will say. *Note:* Unnecessary litigation often occurs because the synopsis is insufficiently detailed or is cryptic. A well-written synopsis is prepared as though the witness were speaking (first person), and demonstrates both the testimony’s relevance and that the witness has personal knowledge of the matter offered.

3. The Defense Counsel’s request indicates the general subject matter of the testimony but does not provide the information required by POM Number 10. In addition, there is no explanation as to why Professor Bassiouni’s testimony is not cumulative with Professor Cassese’s. As written, your request is denied. If the defense produces information in accordance with POM Number 10, the Prosecution will reconsider the request at that time.

4. The Prosecution further objects to the testimony of Prof. Bassiouni for the reasons set out in the document entitled: “Prosecution Response to Defense Witness Requests of 8 October 2004 and Motion to Exclude Attorney and Legal Commentator Opinion Testimony,” served upon Defense on October 13, 2004 and attached hereto.

Lieutenant Colonel, U.S. Marine Corps  
Prosecutor  
Office of Military Commissions

Attachment:  
As stated



**From:** XXXX CIV (L)

**Sent:** Thursday, October 28, 2004 1:55 PM

**To:** 'Mori, Michael, MAJ, DoD OGC'; Swann, Robert, COL, DoD OGC; XXXX, LtCol, DoD OGC; Will Col DoD OGC Gunn (Gunn, Will, Col, DoD OGC); XXXX; XXXX; XXXX, COL, DoD OGC; XXXX, MSG, DoD OGC (XXXX); Lippert, Jeffery MAJ Bamberg Law Center; XXXX, MAJ, DoD OGC (XXXX); XXXX. CIV (L); Brownback, Peter E. COL (L)

**Subject:** United States v. Hicks, Decision of the Presiding Officer, D25

United States v. Hicks

Decision of the Presiding Officer, D25

The Presiding Officer has denied the request for production of Antonio Cassese as a witness. The Presiding Officer did not find that he is necessary. See Military Commission Order 1, section 5H. Accordingly, this request has been moved from the active to the inactive section of the filings inventory in accordance with POM 12. See also paragraph 8, POM 12.

By Direction of the Presiding Officer

XXXX

Assistant to the Presiding Officers

XXXX

Voice: XXXX

Fax: XXXX

UNITED STATES OF AMERICA	)	
	)	
	)	<b>DEFENSE MOTION -</b>
	)	<b>THE ENTIRE COMMISSION</b>
v.	)	<b>TO GRANT PRODUCTION OF</b>
	)	<b>WITNESS DENIED IN D 25</b>
	)	
DAVID HICKS	)	<b>(Antonio Cassese)</b>
	)	
		29 October 2004

The Defense previously requested that name of witness be produced. The request was denied by the Presiding Officer under the provisions of Military Commission Order 1, section 5H.

The Defense requests the Commission direct the production of the witness, and that the Commission consider the following previously made filings, and the attachments thereto, per the Filings Inventory D25, in making its determination.

- a. Motion by the defense requesting Mr. Cassese.
- b. Decision of the Presiding Officer denying the witness.
- c. The government response to D25, if any.

By: \_\_\_\_\_  
M.D. MORI  
Major, U.S. Marine Corps